DIRECTORY OF INFORMATION

AUTHORISATION OF COLLECTIVE INVESTMENT SCHEMES (CIS) AND RELATED SERVICES

IN

AUSTRALIA
CANADA
FRANCE
GERMANY
HONG KONG
ITALY
JAPAN
LUXEMBOURG
MEXICO
NETHERLANDS
SPAIN
SWEDEN
SWITZERLAN
UNITED KINGDOM
UNITED STATES

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September 1997

AUSTRALIA

OVERVIEW OF THE REGULATORY STRUCTURE

What are the applicable laws, and who is responsible for the administration of these laws?

The Corporations Law regulates CIS and related services in Australia. The Australian Securities Commission (ASC) has the responsibility for administering the Corporations Law.

What activities are regulated by these laws?

Activities regulated under the Corporations Law include fundraising activities of collective investment schemes. (Note - the term used to describe collective investment schemes in the Corporations Law is 'prescribed interest scheme'). For example, making offers of investments in prescribed interest schemes (PIs), giving investment advice on PIs, dealing activities in relation to PIs, advertising of investments in, or advising or dealing services in relation to, PIs are regulated under the Corporations Law.

How do these laws regulate the above activities?

Offering PIs - Except in limited circumstances (eg excluded offers such as offers made to wholesale investors), you can only offer investments in PI schemes to investors in Australia if the scheme complies with the Australian regulatory requirements. The key requirements are that the PI scheme must generally be structured as a trust, the management company is a public company with a dealers licence, and there is an ASC approved trustee and a trust deed (which must contain certain statutory covenants) in relation to the scheme. You must also have a prospectus which satisfies the Corporations Law requirements. The prospectus must be lodged/registered (or both) with the ASC.

Giving investment advice - You cannot generally give investment advice relating to PIs in Australia unless you have obtained a dealers or an investment advisers licence from the ASC.

Providing dealing services - You cannot generally provide dealing services (which includes giving investment advice on PIs for commissions/other benefits from product issuers) in Australia unless you have obtained a dealers licence from the ASC. Generally, a management company of a PI scheme is also required to hold a dealers licence.

What are the consequences of not complying with these laws?

Generally, a PI scheme operator (ie the management company and/or trustee) which fails to discharge its legal obligations is liable in a civil action to investors who suffer damage as a result of that failure, and may also be subject to penal sanctions for deliberate breaches of certain legal requirements. Any person who engages in unauthorised or illegal conduct in relation to securities/futures can also be excluded from the securities/futures industry through the exercise of the ASC's administrative powers (eg the powers to revoke/suspend licences and issue banning orders).

REGISTRATION/AUTHORISATION PROCESS

When do you need registration/authorisation?

If you propose to act as a management company of a PI scheme (other than an excluded scheme) which offers its investment to Australian investors:

- you must be registered as a public company (this includes registration as a foreign company); and
- you need to be licensed by the ASC as a dealer; and
- you must lodge/register (as required) a prospectus which complies with the Australian requirements in the Corporations Law.

Schemes are generally excluded (ie excluded schemes) on the basis of factors such as the nature of investors (eg regulated financial institutions and life companies, investors making investments of $500,000 or more, licensed dealers and investment advisers and limited offers (eg less than 20 offers in 12 months)).

If you are acting as a trustee of a PI scheme (other than an excluded scheme) which offers its investments to Australian investors, you need to obtain the approval of the ASC.

If you wish to provide only investment advice relating to PI interests, you need to obtain a dealers or an investment advisers licence from the ASC.

What information should you give to obtain registration/authorisation in Australia?

Approval of Trustees - In order to obtain ASC approval to act as a trustee of a PI scheme, you have to satisfy the ASC criteria for approval of trustees set out in Policy Statement 89. The ASC's criteria includes matters such as the adequacy of the resources available to a trustee to be able to perform its functions properly and the degree of independence the trustee will have from the management company in discharging its duties. In limited circumstances, related party trustees are approved under the guidelines set out in ASC Policy Statement 90. [See below for contact officer details.]

Obtaining a dealers or an investment advisers licence - In order to obtain a dealers or investment advisers licence, you must satisfy certain requirements. These include meeting certain standards of competence, integrity and financial soundness. The ASC provides an "Application Kit" to interested parties. [See below for contact officer details.]

Lodgment/registration of prospectuses - Prospectuses have to be lodged with the ASC and in some cases be registered with the ASC as well. If you wish to lodge/register a prospectus with the ASC, it should satisfy the Corporations Law requirements. The ASC has the power to grant exemptions and modifications from the prospectus requirements. The circumstances under which the ASC will exercise its discretionary

powers in relation to prospectuses are summarised in ASC Policy Statement 56, which also includes an overview of the prospectus requirements in the Corporations Law. [See below for contact officer details.]

What is the time frame within which you can generally expect to have your authorisation/registration completed?

Applications can only be processed once all the relevant information has been provided.

The time period for authorisation/registration varies from case to case. For example, the ASC is under a statutory obligation to register a prospectus which complies with the Corporations Law requirements within fourteen days of lodgement. The processing of an application for a dealers or an investment advisers licence generally takes between six to eight weeks. The relevant contact officers can provide you with further information in this regard.

Who can provide you with any further information?

Mr Richard Cockburn
National Commercial Programs Director
GPO Box 9827
Tel: 03 9280 3201 (direct)
03 9280 3200 (general)
Fax: 03 9280 3444

REGULATORY APPROACH TO FOREIGN PRODUCT AND SERVICE PROVIDERS

If you are a foreign CIS operator or service provider, are there any additional provisions/requirements that apply to you?

Generally speaking, there are no special restrictions on foreign CIS operators or service providers that do not apply to domestic operators or service providers. In limited circumstances, the Australian prospectus requirements may be relaxed in recognition of regulatory requirements imposed in the home jurisdiction of the foreign CIS operator or service provider. The circumstances in which such relief may be available are set out in Policy Statement 65. [Contact officer details to be inserted].

What is the time frame whin which you can generally expect to obtain authorisation/registration?

Generally, the time frame within which foreign applications are processed are substantially the same as for domestic applications.

FRANCE

Directory of information
Authorisation of CIS and related services

COUNTRY: FRANCE

OVERVIEW OF THE REGULATORY STRUCTURE

What are the applicable laws, and who is responsible for the administration of these laws?

The Ordinance n°87-833 dated 28 September 1967 instituting the *Commission des operations de bourse* (COB), the Law n°72-6 dated 3 January 1972 on solicitation and door to door step selling (*dimarchage*), the Law n°88-1201 dated 23 December 1988 relating to collective investment schemes of transferable securities (UCITS) and creating securitized loans funds and the Law n°96-597 dated 2 July 1996 on the modernisation of financial activities are applicable to CIS constitution and marketing and to investment services operation (asset management) in France.

The COB is the competent authority for the administration of these laws (i.e. in particular, authorisation and supervision of CIS and CIS operators in France).

What activities are regulated by these laws?

Activities covered by these laws include the constitution and marketing of CIS and investment services such as portfolio management, reception and transmission of orders.

How do these laws regulate the above activities?

Regarding the *offer of CIS,* the Law does not operate any distinction between professional investors and private customers; any marketing in France - even if the CIS is offered to a limited number of persons - must be authorized by the Commission.

French CIS are structured as a public company (SICAV) or a common fund (FCP).

The *investment management* of a CIS must be carried out by a firm duly authorised to perform this activity (in France, an asset management firm of a CIS management firm); the *depository* who is in charge of both the custody of assets and functions of surveillance must abide by capital adequacy requirements and by a [….] *des charges* registered with the COB.

The *prospectus* - notice of information and statutes of the SICAV or rules of the FCP - must be registered with the COB.

Marketing - To market any security - including a CIS - you need to be either a credit institution, insurance company or an investment firm; persons in charge of door to door step or solicitation (*demacharge*) must be declared to the Public prosecutor by the firm who delivers a card authorizing the activity […….].

What are the consequences of not complying with these laws?

Administrative sanctions may be taken by the COB in case of a breach of its regulations (in particular, regulations n°. 89-04, 96-02 and 96-03) accordingly to the Ordinance dated 1967 (i.e. up to 10 millions francs or up to ten times the amount of the profit).

In addition, professional sanctions may be taken either by the CIS Disciplinary Council or by the COB (license suspension/revocation).

The infringement of the laws dated 1972, 1988 and 1996 are subject to criminal sanctions.

REGISTRATION/AUTHORISATION PROCESS

When do you need registration/authorisation

French firms must register if they provide investment services (CIS or portfolio management, reception and transmission of orders); CIS must be authorised by the COB before their constitution or their marketing in France (and where applicable, i.e when the CIS is registered in a non European country, by the Treasury).

What information should you give to obtain registration/authorisation?

Asset management - In order to get COB registration as an asset management firm, you must file a standard form, which is published at the *Journal official* dated 11 December 1996 and which is available (together with rules and regulations pertaining to this activity) at the COB. Registration criteria are listed in the law dated 1996 : they concern mainly shareholders or associates, capital adequacy, fitness and properties of offices, adequate means and procedures.

Depository - The […….] *des charges* which is filed with the COB includes details regarding means and procedures.

CIS - To be Registered with the COB, a French CIS must comply with the requirements of the law dated 1988 and the decrees dated 1989, which are available at the COB. The CIS file a form listing all the necessary items which have to be included (prospectus, fund rules or instrument of incorporation, depositary' acceptation, audit program of the independent auditor, and as the case may be, contracts relating to advisory services, guarantee contract).

What is the time frame which you can generally expect to have your authorisation/registration completed?

Applications are processed once all regulatory information has been provided, where additional information is needed, the time is deemed to be suspended during the period in which COB is awaiting addition information it has requested.

Asset management firm - The COB shall grant or deny the authorisation within a maximum period of time of three months following the reception of the file. In practice, the period of time is less lengthy (1 ½ month).

CIS - Authorisation of French CIS is granted within a maximum period of time of 1 month, and within 8 days regarding CIS which are not offered to the public (i.e. CIS with less than 20 holders, minimum initial subscription of 1 million francs, no solicitation or door to door step selling).

Who can provide you with any further information?

Mr Francois DELOOZ, head of the asset management division, COB, 39/43 quai Andre Citroen, 75735 PARIS CEDEX 15, telephone: 01 40 58 67 52; telecopy: -1 40 58 67 55

or

Mrs Pascale DUTRONC, senior officer, telephone: 01 40 58 66 90
Mrs Nathalie GUGGENHEIM, senior officer, telephone: 01 40 58 68 41.

REGULATORY APPROACH TO FOREIGN PRODUCE AND SERVICE PROVIDERS

If you are a foreign CIS operator or service provider, are there any additional provisions/requirements that apply to you?

European directives provide for the mutual recognition of license (service provider) and prospectus (CIS marketing).

European services providers benefit from the European directives (Second Banking Coordination Directive and Investment Services Directive); in accordance to the European procedures, they have to notify the competent authorities of their home Member State and may carry on business under the freedom to provide services or establish branches.

European UCITs must lodge with the COB the information which is prescribed in the 85/611/EEC directive; attestation by the Home State competent authorities, prospectus, latest annual report and any subsequent half-yearly report, details regarding marketing (in particular identity of an agent - *correspondent [……..…...]* and *correspondents* - in France in charge of subscription/redemption of units, providing information to the units holders and to the COB).

Foreign CISI (i.e. non European or non coordinated European schemes) must file a form which is rather similar to the European coordinated UCITS, but additional information will be requested on the CIS operators and the COB will check that the investment policy and the prospectus provide for the same level of security and transparency than French schemes.

What is the time frame within which you can generally expect to have your authorisation/registration completed?

European coordinated UCITS: the maximum period of time is 2 months. Non European schemes : the COB endeavours to limit the maximum period of time to 3 months.

GERMANY

MARKETING OF FOREIGN COLLECTIVE INVESTMENT SCHEMES IN GERMANY - SUPERVISORY ASPECTS

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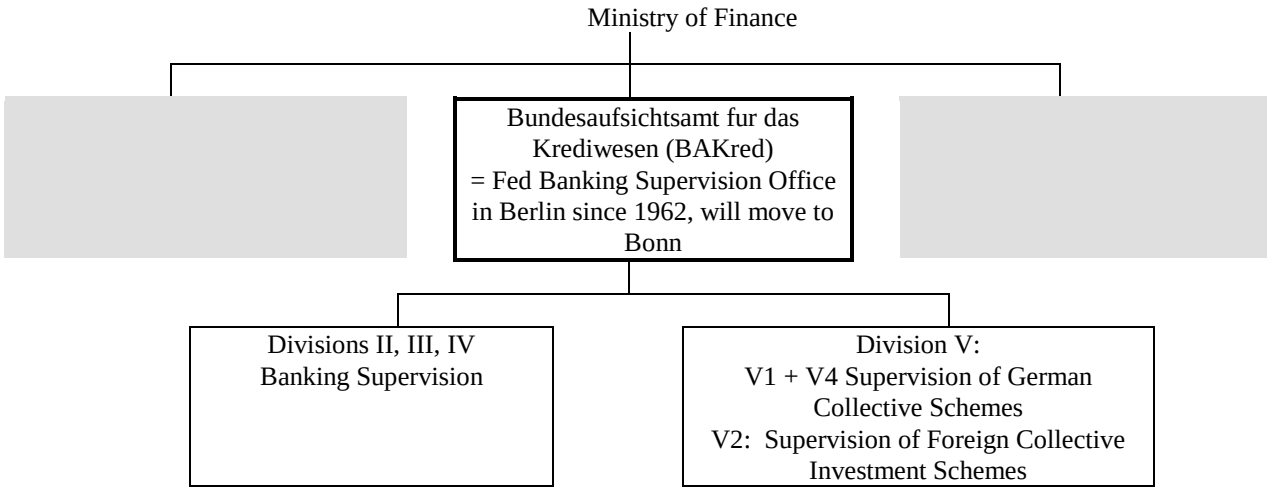
1. Federal Supervisory Authorities



2. Relevant Regulations

2.1

Relevant Law for Domestic Schemes:

Gesetz Uber Kapitalanlagegesellschaften (Capital Investment Companies Act) of 1957

Only possible construction is the “Sondervemogen” = assets collected in a fund without legal personality, based on a contract between the capital investment company and the investors.
The fund assets are usually owned collectively by the investors. They must be kept separately with a depository bank.
The funds are open-end funds.

4 types of investment policy are possible:

- securities funds (implementation of the EU-UCITS-Directive. All German securities funds are UCITS)
- real estate funds
- money market funds
- participation funds

Apart from these supervised funds other collective investment schemes exist, such as closed-end real estate funds in the form of limited partnerships. These schemes are not supervised by any special authority.

2.2
Relevant Law for Foreign Schemes:

Gesetz Uber den Vertrieb auslandischer Investmentanteile (Law Concerning the Distribution of Foreign Investment Shares) of 1969
Short: Auslandinvestment-Gesetz (Foreign Investment Act)

Divided into three parts:

- Distribution of NON-UCITS
- Distribution of UCITS
- Tax Regulations

3. Scope of the Law

3.1
Private placement is not supervised = not restricted

The BAKred has to be notified in advance only if PUBLIC distribution of foreign investment shares in Germany is intended.
Private placement of such shares (only specific persons known to the distribution are addressed) is possible without notification.

3.2
Regulated Schemes

Regardless of its legal structure, any scheme falls within the scope of the law, provided its portfolio of assets consists of
a) securities
b) real estate
c) deposits
d) receivables from money loans
(each one either alone or in combination)
and provided these assets are managed following an investment strategy of risk spreading.

Examples of non-regulated schemes:
Future funds, because they do not invest in any of the above named assets.
Venture capital funds, if the purpose is not merely passive investment in securities, but establishing management control over the respective companies.
Such schemes do not fall within the scope of the law and can therefore be distributed without restriction.

4. Notification Procedure

4.1
UCITS

Necessary is notification according to sec 15c Auslandinvestment-Gesetz

The foreign investment company or a representative must write a notification letter to the BAKred, including the relevant information and a number of documents (e.g. authorisation by the foreign supervisory office, prospectus, reports, confirmation letters by the German paying agent and information office). All documents have to be translated into German.
Details are described in a leaflet "Merkblatt fur Anzeigen", which contains instructions on the preparation of a notification. The leaflet is written in German and can be obtained at the BAKred.

If the BAKred has not objected within two months upon recept of the complete notification letter, the UCITS may start distribution and will be registered.

Within two weeks after it received the notification, the BAKred will inform the foreign fund whether the notification is complete and the two months period is running, or whether elements are missing. It will normally also address material problems (e.g. German prospectus does not meet the requirements of the law).

These material problems must be resolved before the expiry of the two months. If not, the BAKred is forced by law to prohibit the distribution of the UCITS immediately.

Costs:
3.000, - DM per scheme (e.g. per sub-fund) for the notification procedure
1.000, - DM per scheme annually

4.2
NON-UCITS

Notification according to sec 7 AustInvestimG

The procedure itself is similar to the one described for UCITS. (Notification letter to the BAKred, 2-weeks, 2-month period). Details are also described in the leaflet mentioned above.

However, for non-UCITS with the intention to distribute their shares, a lot more documents have to be supplied and a number of detailed requirements concerning the structure and the investment rules of the foreign scheme have to be met.
For example:

- redemption possible at any time
- no investment in other schemes (fund of fund is not allowed)
- no encumbrance of scheme assets
- custodian bank which controls the activities of the investment-management company and fulfils duties similar to the ones executed by German depositary banks (as described in the German Investment Act).

Not many foreign schemes fulfil these requirements. In most cases scheme rules and the custodian agreement have to be adapted for notification in Germany.
Because of the complexity of the matter, notifications under sec 7 require a very detailed preparation, which is usually done by specialized lawyers.

Costs:
10.000, - DM per scheme (e.g. per sub-fund) for the notification procedure
3.000, - DM per scheme annually

5. Marketing Issues

5.1
Market Situation
In Germany, collective investment schemes are still mainly distributed by banks' branch networks and sales agents of insurance companies. The number of independent advisors and of direct distribution channels initiated by foreign companies is however increasing.

5.2
Advertising:
Any advertisement must mention the prospectus and the address where it can be obtained in Germany. Performance numbers have to indicate that there is no guarantee for future success.
It is not allowed to mention other fund names than the ones registered in Germany in the prospectus or the reports (esp. important for umbrella-funds).
Marketing as a whole has to be done with due regard to the provisions of the Law against Unfair Competition.

5.3
Sales Agents:
Until the European Investment Services Directive will be implemented next year, non-banks in Germany may arrange the sale of scheme-shares as representatives of the foreign investment scheme without special authorisation. They must however restrict their activity to a purely advisory role and may only act as intermediaries.
Investors have a right of revocation within a period of two weeks if the sale was negotiated outside the business premises of the salesperson.

5.4
Further marketing of a registered scheme may be prohibited by the BAKred if German law is violated or if the scheme does not inform the BANred of changes and does not subject the relevant documents, e.g. new prospectus or report. Distribution of non-UCITS may in addition be prohibited if the scheme rules have been violated.

6. Tax regulations

Holders of registered foreign investment shares are basically taxed in the same way as German investment shareholders.
Non-registered foreign investment schemes are treated less favourably. They may however appoint an authorised person and furnish certain information t avoid most of the disadvantages.
Questions concerning tax issues have to be addressed to the Bundesamt fur Finanzen.

7. Outlook: Amendments of the AustInvestmG

Effective as from January 1998, non-UCITS may in addition to the above mentioned requirements only be registered if they are subject to an investment supervisory authority in their country of domicile.
The two-weeks and two-months period for the registration procedure concerning non-UCITS will be prolonged to four weeks and three months.

Further amendments are planned following the changes in the German investment legislation.

HONGKONG

OVERVIEW OF THE REGULATORY STRUCTURE

What are the applicable laws, and who is responsible for the administration of these laws?

The applicable laws and requirements are set out in the Securities Ordinance, Protection of Investors Ordinance and the Code on Unit Trusts and Mutual Funds, administered by the Securities and Futures Commission (SFC).

AUTHORISATION PROCESS

When do you need authorisation?

A collective investment scheme must be authorised by the SFC before it can be marketed to the public in Hong Kong.

What information should you give to obtain authorisation ?

The requirements are set out in the Code on Unit Trusts and Mutual Funds. In summary, an application for authorisation should include:

- Application Form as set out in the Code
- the offering and constitutive documents, and most recent financial report
- information about the management company and trustee/ custodian
- any request for waivers from the Code, with reasons
- application fee payable to the SFC.

What is the time frame within which you can expect to have your authorisation completed?

The time required for authorisation depends on the compliance of the fund with the Code on Unit Trusts and Mutual Funds. Applications which seek waivers from any provision must give detailed reasons why waivers are sought. Applications which seek waivers and specialised investment funds can be expected to take longer to process. For standard funds, whether domestic or foreign, the SFC seeks to respond to applications *within one week of receipt.*

Who can provide you with further information?

Securities and Futures Commission:
Investment Products Division
12th Floor, Edinburgh Tower
The Landmark
15 Queens Rd., Central
Hong Kong
Tel: (852) 2840 9259
Fax: (852) 2877 0318
Email: ip@hksfc.org.hk

REGULATORY APPROACH TO FOREIGN COLLECTIVE INVESTMENT SCHEMES

Are there any additional requirements that apply to you?

Hong Kong rules permit the authorisation of foreign funds subject to compliance with the Code on Unit Trusts and Mutual Funds. Some key requirements of the Code are:

- Fund manager/ adviser must be qualified, experienced and domiciled in a jurisdiction with an acceptable supervisory regime
- Fund must have a supervisory trustee/ custodian
- Fund should have a standard open-ended structure
- Funds not based in Hong Kong must appoint a Hong Kong Representative
- Fund must provide an offering document in English and Chinese

For details of the above and the full requirements for authorisation, reference must be made to the Code on Unit Trusts and Mutual Funds, available from the SFC.

May 1997

LUXEMBOURG

lnstitut Monetaire Luxembourgeois, Luxembourg

1. The regulatory framework of collective investment management activities in Luxembourg

At present, collective investment management activities are regulated in Luxembourg by the Law of March 30, 1988 relating to collective investment schemes and by a circular of the Institut Monetaire Luxembourgeois (“IML"), namely circular IML 91/75 of January 21, 1991, which has more particularly been issued with the purpose of providing clarifications on a number of items related to the implementation of the before-mentioned law.

A translation into English of the original French version of both texts is available.

The Law of March 30. 1988 translates into the Luxembourg legislation the provisions of the UClTS directive 85/61 1/EEC of December 20, 1985 ("the UClTS directive"). It covers all the categories of collective investment schemes, including those which do not fall within the scope of the UCITS directive.

Collective investment schemes which quality as UCITS fall under part 1 of the Law of March 30, 1988 whereas those schemes which do not have UCITS status fall under part II of the same law. These are schemes which, although they invest in transferable securities, are excluded from the scope of the UCITS directive as well as schemes which invest in assets other than transferable securities (e.g. money market instruments, venture capital, real estate, derivative instruments).

As opposed to UClTS, collective investment schemes which fall under part II of the Law of March 31, 1988 may choose to be closed-ended in the sense that they are not required to repurchase their units at the request of the unitholders.

Collective investment schemes of whatever type or form which fall under the scope of the Law of March 30, 1988 are subject to the approval and supervision of the IML. The supervision which is exercised by the IML purports to secure that the collective investment schemes authorized in Luxembourg observe all the provisions of laws, regulations or agreements relating to their organization and operation.

The IML is a public institution which has been established by law in 1983 to become the legal successor of the former Commissariat au Controle des Banques which was created in 1945.

The IML is endowed with the powers of a monetary authority for Luxembourg while having at the same time the competency to supervise the financial sector in Luxembourg. In that capacity, the IML is the authority which is entrusted with the prudential supervision of the professionals of the financial sector who exercise their activities in Luxembourg. The IML is more particularly the supervisory authority for banks or credit institutions, collective investment schemes as well as other professionals of the financial sector such as financial advisers, investment managers, securities dealers, market makers, professional depositories of securities, etc.

2. The regulation of foreign collective investment schemes in Luxembourg.

The regulatory regime which applies to foreign collective investment schemes in Luxembourg makes a distinction between

- collective investment schemes with UCITS status from other Member States of the European Union which intend to market their units in Luxembourg under the provisions of the UICITS directive;

- other collective investment schemes of whatever jurisdictions which intend to market their units publicly in or out from Luxembourg;

- co1lective investment schemes which are merely seeking a listing of their units on the Luxembourg Stock Exchange.

The rules of the regulatory regime which applies to collective investment schemes with UCITS status from other Member States of the European Union are those which are set out in chapter 7 of the Law of March 30, 1988 relating to collective investment schemes.

By virtue of these rules, the collective investment schemes in question may, without any further authorization from the IML, freely market their units in Luxembourg subject only to the notification procedures set forth under the corresponding provisions of section VIII of the UCITS directive.

All other foreign collective investment schemes which do not fall within the scope of the UCITS directive are subject to the approval of the IML if they intend to market their units publicly in or out from Luxembourg. In order to obtain IML approval, these schemes must be able to fulfil the conditions which are set forth in article 70 of the Law of March 30, 1988, i.e. they must be submitted in their State of origin to a permanent supervision performed by a supervisory authority set up by law in order to ensure the protection of investors. This means that the regulatory regime to which those schemes are submitted in their home jurisdiction must provide to investors a level of protection which is at least equivalent to the one which is provided to investors in Luxembourg collective investment schemes.

Article 89(6) of the Law of March 30, 1988 provides that the accounting information included in the annual reports of foreign collective investment schemes which register with the IML under the provisions of the aforecited article 70 must be audited by an independent auditor providing al1 guarantees of honourability and professional skill.

Article 89(6) of the Law of March 30, 1988 imposes upon the independent auditors of these schemes the same obligations than the ones which the independent auditors of Luxembourg based collective investment schemes have vis-a- vis the IML.

The provisions of law which relate to these obligations state that if in the discharge of his duties, the independent auditor becomes aware that the information supplied by a collective investment scheme to its investors or to the IML does not truly describe that scheme's financial condition, he must immediately inform the IML of that fact. The independent auditor is also under the obligation to report to the IML any breaches of a

scheme's investment restrictions which come to his notice. Finally, the IML may order a scheme's independent auditor to verify certain aspects of that scheme's operations and activities.

The provisions of article 70 of the Law of March 30, 1988 are not applicable to foreign collective investment schemes which merely seek a listing on the Luxembourg Stock Exchange without having the intention to address themselves to the public in Luxembourg by way of a direct and active solicitation. These schemes are subject to the specific requirements which the Commissariat aux Bourses (“CAB") has made public by way of a circular letter which is known as circular CAB 91/3 of July 17, 1991. It results from the said circular letter that when an application for listing is filed by a foreign collective investment scheme which is organized under the laws of a non-member State of the European Union, the policy of the CAB is to consider on a case by case basis the possibility for such a listing. In this context,. the CAB analyses the structure and functioning of the supervision which is exercised on the foreign collective investment scheme by its home authority.

For the purposes of that analysis, the CAB requires that the home authority of a foreign collective investment scheme delivers a certificate in which it states that the scheme in question is submitted to its supervision. The home authority has moreover to provide to the CAB detailed information concerning the functioning and modalities of this supervision. In order to consider the recognition of the supervision modalities in force in the country of origin of the foreign collective investment scheme, the CAB examines if the legislation regulating the foreign collective investment scheme conforms closely to the IOSCO Principles for the Regulation of Collective Investment Schemes. For this purpose, the CAB requires a comparative table of the lOSCO principles with the legislation of the country of origin of the foreign collective investment scheme.

It results from the foregoing that the regime to which foreign collective investment schemes are submitted in Luxembourg differs depending upon whether these schemes intend to address themselves to the public in Luxembourg by way of a direct and active solicitation, in which case they come within the competency of the IML if they do not fall under the provisions of the UCITS directive, or whether they merely seek a listing on the Luxembourg Stock Exchange, in which case they fal1 within the sole competency of the CAB. In the first case, they have to fulfil the conditions which are set forth in article 70 of the Law of March 30, 1988 whereas in the second case, they must be able to meet the specific requirements which the CAB has set out in its circular CAB 91/3 of July 17, 1991.

The recognition by the CAB of a given jurisdiction does not imply that the IML will likewise consider the same jurisdiction as acceptable under the provisions of article 70 of the Law of March 30, 1988. The CAB and the IML make their determination independently and separately one from each other, so that it may well happen that a jurisdiction recognized by the CAB will eventually not be acceptable to the IML under the provisions of the aforecited article 70.

3.. Procedure for obtaining IML approval.

Foreign collective investment schemes which do not fall within the scope of the UCITS directive have to file with IML an application for registration under the provisions of article 70 of the Law of March 30, 1988 if they intend to market their units publicly in or out from Luxembourg. In support of their application, they have to submit to the IML a file including, inter alia, the following documents and information:

- an attestation by the home regulator to the effect that the foreign collective investment scheme which is seeking IML approval is duly authorized under the laws of its home jurisdiction;

- if necessary, a description of the regulatory framework in place in the home jurisdiction of the scheme in question together with a description of the supervision which the home regulator exercises over the scheme;
- a copy of the scheme's constituting documents (articles of incorporation or management regulations);
- a copy of its current prospectus and of any other documents intended for prospective investors;
- a copy of all material agreements such as the depository and investment management or advisory agreements;
- when appropriate, a copy of the scheme's latest annual and subsequent half yearly report;
- information concerning the promoters of the scheme, such as recent financial statements;
- a curriculum vitae of its directors and managers;
- a declaration from the independent auditor of the scheme that he has taken knowledge of the provisions of article 89 of the Law of March 30, 1988 and that he is prepared to fulfil vis-a-vis the IML the obligations which are imposed upon him by the same article;
- details of the arrangements which are planned to be made for the marketing of the scheme's units in or out from Luxembourg and indications on the type of targeted investors.

The above documents and information are generally compiled and submitted to the IML with the assistance of a firm of lawyers/accountants and/or a bank in Luxembourg.

Under normal circumstances, the IML is able to process applications for registration which it receives from foreign collective investment schemes within a few weeks time. However, the length of the delay which is required to process such applications does not only depend on the rapidity with which the IML is able to examine these applications. There are indeed a number of other factors which intervene therein, such as

(i) the degree of care and diligence with which the promoters prepare the information and material which must accompany their application;
(ii) the variable nature and degree of difficulty of the problems with which the IML may be faced during the course of its examination and

(iii)the length of time the promoters take to react to the queries and comments which are raised by the IML.

In the same context, it should be noted that the authorization of a first collective investment scheme by any promoter may involve more time as the IML has to carry out a number of preliminary investigations which are no longer necessary when the same promoter subsequently seeks the IML's approval for one or several additional schemes.

It results from the foregoing that the delay required for processing new applications may substantially vary from case to case.

4. Fees payable by foreign collective investment schemes for authorization and supervision.

By virtue of a grand-ducal regulation of March 12, 1991, foreign collective investment schemes which register in Luxembourg are liable to a one-time registration fee of 60,000- Luxembourg francs which is payable to the IML at the time of the application for registration. This amount is increased to 120,000Luxembourg francs for schemes which have the structure of an umbrella fund.

In addition to the before-mentioned registration fee, the IML also levies a fee for the ongoing supervision it exercises over collective investment schemes which are authorized to market their units in Luxembourg.

In the case of foreign collective investment schemes which fal1 within the scope of the UCITS directive, the rate of this fee is set at 60,000- Luxembourg francs for those schemes which have the structure of a single portfolio fund and at 120,000 Luxembourg francs for those schemes which have the structure of an umbrella fund.

In the case of foreign collective investment schemes which are non-UCITS, the same fee is set at 90,000- Luxembourg francs, irrespective of the structure they have.

The rates of the fees charged to foreign collective investment schemes (UCITS and non UCITS) which market their units publicly in or out from Luxembourg are identical to those charged to Luxembourg collective investment schemes except that the fee for the ongoing supervision of foreign non-UCITS is set at 90,000Luxembourg francs.

5. The marketing of collective investment schemes in Luxembourg.

Only banks and other financial institutions which are authorised by virtue of their legal status to exercise such an activity are permitted to market collective investment schemes in Luxembourg.

Individuals may thus not intervene in the marketing or distribution of a scheme's units.

The Law of March 30, 1988 does not provide for any particular rules of conduct in relation to the marketing of domestic and foreign collective investment schemes in Luxembourg.

It remains however that the legal texts which govern in a general manner the commercial practices authorized in Luxembourg are also applicable when units of collective investment schemes are distributed there.

The legal texts to which reference is made here are

- the Law of August 25, 1983 relating, to the legal protection of consumers (as amended),
- the Law of November 27, 1986 regulating certain commercial practices and penalizing unfair competition; and
- the Law of July 16, 1987 concerning hawking, display of goods and canvassing of orders (as amended).

The Law of November 27, 1986 regulating certain commercial practices and penalizing unfair competition prohibits all comparative publicity in the field of collective investment schemes and in any other field. The said law qualifies indeed as an act of unfair competition which is liable to punitive sanctions the fact for somebody to make a publicity involving a comparison with other competitors or his products or services.

The Law of July 16, 1987 concerning hawking, display of goods and canvassing of orders (as amended) provides that all hawking is prohibited.

The term “hawking" ("colportage") which is used in the said law designates the door to door selling and simultaneous delivery of goods, securities or instruments which are equivalent to securities, whereas the term "canvassing" designates the solicitation of orders in view of a later delivery.

Unlike hawking, the canvassing of orders at the domicile of prospective clients (demarchange a domicile) is not prohibited although it is subject to the following restrictions:

- a canvasser may only approach private clients on the basis of a written solicitation which has been addressed to him by these clients;
- the contracts which are concluded by way of canvassing must provide that a private client may within seven days from his purchase commitment notify to the canvasser by registered mail the withdrawal of his commitment.

The Law of March 30, 1988 provides that all publicity comprising an invitation to purchase the units of a collective investment scheme must indicate that a prospectus exists and the places where it may be obtained by the public.

A foreign collective investment scheme which is authorized to market its units in Luxembourg must appoint a banking institution within the meaning of the Law of April 5, 1993 relating to the financial sector to ensure that facilities are available in Luxembourg for making payments to investors and for repurchasing units.

It must also take the measures necessary to ensure that the documents and information which it is obliged to provide (prospectuses, financial reports, notices to investors,

etc....) are made available in Luxembourg in either the Luxembourg, French, German or English language.

6. The Luxembourg Investment Fund Association

The Luxembourg Investment Fund Association (Association Luxembourgeoise des Fonds D'Investissement) - in short ALFI - was founded in 1988 to serve and promote the Luxembourg investment funds industry and defend the interests of its members.

The tasks which ALFI has assigned itself are

- to encourage the development of the investment fund industry and to promote the Luxembourg financial centre as a privileged location for the domiciliation, administration and marketing of collective investment schemes;
- to protect and enhance the competitive climate for collective investment schemes based in Luxembourg from a legal and tax perspective;
- to represent the Luxembourg investment fund sector in the dealings with domestic and international regulatory and supervisory bodies;
- to provide information and advice, conduct research, and act as a forum for the discussion of issues affecting members and the industry as a whole;
- to protect the reputation of Luxembourg as a major financial centre and to develop professional knowledge and expertise through the organization of training programs adapted to the specific needs of those concerned

ALFI may be contacted at the following address:

ALFI Association Luxembourgeoise des Fonds d'Investissement
5, rue Aldringen
L-1118 Luxembourg
Fax: (352) 22 30 93

Contact person:

Mrs. Martine SCHEUREN
Secretary General
Tel.: (352) 22 20 26

7. Inquiries regarding the regulatory regime which applies to foreign collective investment schemes in Luxembourg.

Inquiries regarding the requirements applicable to foreign collective investment schemes which intend to market their units publicly in or out from Luxembourg may be addressed to the

Institut Monetaire Luxembourgeois
L-2983 Luxembourg
Fax: (352) 49 21 80

Contact persons:
Mr. Charles STUYCK
Premier Conseiller
Tel.: (352) 40 29 29 - 250
or
Mr. Edmond JUNGERS
Consei1ler
Tel.: (352) 40 29 29 -255

Inquiries regarding the requirements applicable to foreign collective investment schemes which seek a listing on the Luxembourg Stock Exchange may be addressed to the

Commissariat aux Bourses
BP 532
L-2015 Luxembourg
Fax: (352) 46 62 13

Contact persons:

Mr Charles KlEFFFR
Commissaire aux Bourses
Tel. (352) 478 2616
or
Mrs. Daniele BERNA-OST
Attachee de Gouvernement
1 ere en rang
Tel.: (352) 478 2610

MEXICO

COMISION NACIONAL BANCARIA Y DE VALOES, MEXICO

According with the current Mexican legislation, a foreign ClS is not allowed to market its shares in Mexico. The only possibility, at the present, is that a foreign financial institution constitutes a Mexican subsidiary to operate as an Operating Company of Mutual Funds or as a Mutual Fund itself. The foreign financial institution has to be established in a country entailed with Mexico through an international agreement that allow the establishment of subsidiaries in national territory. Perhaps in the near future, we might be setting up the rules related with the marketing of foreign ClS's in our country.

UNITED STATES

OVERVIEW OF THE REGULATORY STRUCTURE

What are the applicable laws, and who is responsible for the administration of these laws?

Collective Investment Schemes, referred to as "investment companies" in the United States, are governed primarily by the Investment Company Act of 1940 ("Investment Company Act"). [1] The Investment Company Act establishes a comprehensive framework of federal regulation for the protection of U.S. investors. The Investment Advisers Act of 1940 [2] ("Investment Advisers Act") provides for the federal regulation of investment advisers that provide advisory services to U.S. investment companies. The Division of Investment Management of the U.S. Securities and Exchange Commission (the "Commission") administers the Investment Company Act and the Investment Advisers Act.

What activities are regulated by these laws?

The Investment Company Act requires the registration of an investment company with the Commission before it can offer its securities to the public. (See discussion below on the requirements for non-U.S. investment companies who wish to offer their securities in the United States). The Investment Company Act also regulates most aspects of investment company governance and operations, including, among other things, disclosure, accounting, pricing, the use of leverage, transactions with affiliates, and the custody of investment company assets. The Advisers Act requires the registration of an investment adviser that uses U.S. jurisdictional means to advise a registered investment company. [3]The Advisers Act also prohibits certain fee arrangements and fraudulent and deceptive practices by investment advisers, and requires investment advisers to disclose, among other things, any economic or other interests that they may have in transactions that they effect for clients. [4]

What are the consequences of not complying with these laws?

The Commission is authorized to enforce the provisions of the federal securities laws through both administrative proceedings and civil actions. For certain violations, investors who suffer damages may also have the right to bring an action against the investment company or investment adviser in the U.S. courts. The Commission also is authorized to refer cases to the Office of the Attorney General, which has the discretion to institute criminal proceedings under the federal securities laws.

REGISTRATION/AUTHORIZATION PROCESS

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[1] 15 U.S.C. § 80a. Registered investment companies also must comply with certain provisions of the Securities Act of 1933 (15 U.S.C. § 77a) and the Securities Exchange Act of 1934 (15 U.S.C. § 78a)

[2] 15 U.S.C. § 80b.

[3] 15 U.S.C. § 80b-3A.

[4] 15 U.S.C. §§ 80b-4 to -6.

What does a non-U.S. investment company need to do to offer its securities in the United States?

To ensure that U.S. investors receive the same essential investor protections whether they acquire shares in a non-U.S. investment company or in a U.S. investment company, Section 7(d) of the Investment Company Act requires that a non-U.S. investment company that wishes to publicly offer its securities in the United States first obtain an order from the Commission permitting it to register under the Investment Company Act. [5] To issue such an order, the Commission must find that "by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of [the Investment Company Act against the non-U.S. investment company,] and that the issuance of [the] order is otherwise consistent with the public interest and the protection of investors." [6]

A non-U.S. investment company that can comply with the Investment Company Act may obtain a Section 7(d) order and access the U.S. market, assuming that the standards of the section are met. Section 7(d), in effect, requires a non-U.S. investment company to structure itself and operate as a U.S. investment company. Investment companies organized under the laws of many non-U.S. jurisdictions, however, are structured differently from U.S. investment companies, and many non-U.S. jurisdictions also do not address in a comparable manner the concerns addressed by the Investment Company Act. As a result, very few non-U.S. investment companies have applied for an order under Section 7(d).

What are other means by which non-U.S. investment advisers can access the U.S. market?

While non-U.S. investment companies may choose not to meet the standards of the Investment Company Act and therefore may not be able to offer their securities publicly in the United States, staff interpretations and innovations in the industry, discussed below, have increased the ability of non-U.S. investment advisers to offer their services to U.S. investors. These developments allow non-U.S. advisers to access the U.S. market, while at the same time ensuring that U.S. investors continue to receive essential investor protections.

The Offer of Advisory Services in the United States

The Advisers Act generally requires the registration of an investment adviser that has its principal place of business outside of the United States and uses U.S. jurisdictional means in connection with its business as an investment adviser. [7]In a series of recent interpretations by the Commission staff, non-U.S. investment advisers have been given increased flexibility in offering their services to U.S. investors. [8] Pursuant to these

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[5] 15 U.S.C. § 80A-7(D)
[6] id.
[7] 15 U.S.C. § 80b-3A.
[8] See, e.g Uniao de Bancos de Brasileiros S.A. (pub. avail. July 28, 1992), The National Mutual Group (pub. avail. March 8, 1993), Mercury Asset Management (pub. avail.

interpretations, non-U.S. advisers may structure their advisory businesses in a way that provides U.S. clients with the protections of the Advisers Act, while permitting the advisers' foreign businesses to operate under foreign law. As a result, non-U.S. advisers may register in the United States as investment advisers and offer their services to U.S. investment companies or establish registered investment companies in the United States.

The Sale of Investment Company Shares in the United States

1. The Use of "Master-Feeder" Arrangements

The investment management industry has developed "master-feeder" structures. These are arrangements through which one or more collective investment vehicles ("feeder funds"), having substantially identical investment objectives, pool their assets and invest in a single investment company ("master fund") having the same investment objective. To achieve economies of scale and tax efficiencies, investment managers may organize separate feeder funds in the United States and outside the United States, to be offered to U.S. and non-U.S. investors, respectively. The two-tier master-feeder structure permits a simultaneous public offering of interests in a single pool of assets to U.S. and non-U.S. investors on a tax-efficient basis.

The ability of an investment company sponsor to use a master fund registered in the United States, and feeder funds registered and distributed in other jurisdictions, depends on whether non-U.S. jurisdictions permit master-feeder structures. While the U.S. securities laws permit master-feeder arrangements, many non-U.S. regulatory schemes prohibit such arrangements by placing a percentage limitation on an investment company's investments in shares of another investment company.

2. "Mirror" or "Clone" Funds

In a mirror fund structure, a sponsor organizes legally distinct investment companies with substantially similar investment characteristics in the United States and in other countries. Mirror funds may offer greater flexibility than master-feeder arrangements to tailor individual investment companies to the tax and regulatory regimes of the various countries in which they offer their shares. [9]The Commission has encouraged the use of mirror fund structures as an alternative to obtaining an order under Section 7(d). [10]

3. U.S. Private Placements

April 16, 1993), Kleinwort Benson Investment Management Limited (pub. avail. Dec. 15, 1993), The Murray Johnstone Group (pub. avail. Oct. 7, 1994).

[9] See, e.g., Banque Indosuez Luxembourg (pub. avail. Dec. 10, 1996).

[10] Applications of Foreign Investment Companies Filed Pursuant to Section 7(d) of the Investment Company Act of 1940, Investment Company Act Release No. 13691, 49 Fed. Reg. 55 (Dec. 23, 1983).

The Commission staff has taken the position that a non-U.S. investment company is permitted to make private offers or sales of its securities in the United States to the same extent as U.S. private investment companies. [11]

FOR ADDITIONAL INFORMATION

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[11] See Touche Remnant & Co. (pub. avail. Aug. 27, 1984), Investment Funds Institute of Canada (pub. avail. May 4, 1996), Goodwin, Procter & Hoar (pub. avail. Feb. 28, 1997).